

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

IN THE MATTER OF) ORDER No. 97-043
MOLLER RANCH ASSOCIATES, L.P.)
DISCHARGE OF SILT TO) ADMINISTRATIVE
GOLD CREEK & TEHAN CANYON CREEK) CIVIL LIABILITY
CITY OF PLEASANTON)
ALAMEDA COUNTY)

The California Regional Water Quality Control Board, San Francisco Bay Region, (hereafter Regional Board) finds, with respect to Moller Ranch Associates, L.P., (hereafter Discharger), that:

1. The Discharger violated provisions of law for which the Regional Board may impose civil liability under Section 13385 of the State Water Code.
2. A hearing on this matter was held before the Regional Board on March 19, 1997, Second Floor, BART Headquarters Building, located at 800 Madison Street in Oakland, California. The Discharger, or the Discharger's representative(s), had the opportunity to be heard and to contest the allegations in Amended Complaint Order No. 97-004 which recommended the imposition of civil liability by the Regional Board.
3. At the hearing, the Regional Board considered whether to affirm, reject or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. On August 20, 1992, the State Water Resources Control Board adopted Order No. 92-08-DWQ, implementing National Pollution Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRs) for Discharge of Storm Water Runoff Associated with Construction Activity (hereafter the General Permit). The project's WDID No. is 2-01S305022.
5. On July 14, 1995, Moller Ranch Associates, L.P, filed with the State Board a Notice Of Intent (NOI) to comply with the provisions of the General Permit, for the Moller Ranch Project. The total size of the site is 198 acres, however approximately 60 acres were disturbed for the purpose of development and subject to provisions of the General Permit. The site is located at 5710 Foothill Road, west of Highway I-680, in the City of Pleasanton, Alameda County.
6. Surface water drainage from the site is tributary to Gold Creek, Tehan Canyon Creek, Arroyo De La Laguna, Alameda Creek, and subsequently to San Francisco Bay, all Waters of the State. The existing beneficial uses of the water downstream of the project include municipal, agricultural, and industrial supply, recreational use, aesthetic enjoyment, and aquatic wildlife habitat.

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7. Provisions of the General Permit state, in part, the following:
 - [I] A.1 Discharges of material other than storm water, which are not otherwise regulated by a NPDES permit, to a separate storm sewer system or waters of the nation are prohibited.
 - [II] A.2 Storm water discharge shall not cause or threaten to cause pollution, contamination, or nuisance.
 - [III] C.2 All Dischargers must develop and implement a Storm Water Pollution Prevention Plan in accordance with Section A: Storm Water Pollution Prevention Plan (SWPPP).
8. Section A of the General Permit defines the contents of a SWPPP to be a document which identifies, constructs, and implements storm water pollution prevention measures (control practices) to reduce pollutants in storm water discharges from the construction site. Item No. 6 of Section A - Erosion and Sediment Control, prescribes practices to revegetate disturbed areas as soon as feasible after grading, and requires consideration of seeding, mulching, and stabilization practices. At a minimum the discharger must implement these practices on all areas during the rainy season.
9. The San Francisco Bay Basin Water Quality Control Plan (the Basin Plan), prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses, (Table 4-1, Item No. 9).
10. The discharger has violated waste discharge requirements contained in General Permit 92-08 DWQ (NPDES CAS000002), and discharge prohibitions of the San Francisco Bay Basin Plan.
11. The SWPPP for the site inadequately prescribed measures such that pollutant levels of the discharged storm water were not reduced and in some instances were increased. Had appropriate measures been adequately described in the SWPPP and implemented , significant reductions of pollutants could have been achieved. Measures, such as treatment of slopes with grass seed (Hydroseed), were implemented late in the rainy season (applied in November, 1995). Alternative erosion control measures were not considered. The discharge from the last basin of the site, at the lower area, caused significant erosion down-grade in the ravine leading to Tehan Creek. Straw bales and silt fences proved to be ineffective because large portions of the site remained prone to erosion. This resulted in excessive amounts of sediment laden water leaving the site.
12. Inspections performed October 20, 1995, and afterwards, indicate that the SWPPP had not been fully implemented. Simple Best Management Practices (BMPs), had not been implemented or were circumvented. As a result, unacceptable discharges of large volumes of sediment laden storm water had occurred during each rain event. As

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described in the staff report, storm water discharges occurred from this site which caused pollution to Waters of the State.

13. Although the site's Stormwater Pollution Prevention Plan (SWPPP), did not specifically identify erosion protection of the site's slopes, failure to protect those slopes is a violation of the Permit. Permit condition, Section A, Item No. 6 requires the discharger to revegetate disturbed areas as soon as feasible after grading. At a minimum the discharger must implement these practices on all areas during the rainy season. Much of the site's graded areas remained unprotected from erosion; the application of hydroseed in late October or November does not satisfy the Permit's conditions.
14. That failure to implement appropriate erosion control measures constitutes a violation of General Storm Water Permit No. 92-08 DWQ which resulted in a discharge of silty water to Waters of the State.
15. The discharger violated Waste Discharge Requirements, (Section 13385(a.2), California Water Code) by failing to comply with the provisions and discharge prohibitions of the State's General Permit regulating discharges of stormwater runoff associated with construction activity and violated this Board's Basin Plan (Section 13385(a.4), California Water Code), by discharging sediment in prohibited quantities.
16. The extent of damage due to sediment discharged from the site to adjacent drainage ways, tributary to Tehan Creek and Gold Creek is difficult to assess; however, silt deposition in creeks, rivers and lakes can cause significant environmental damage, (Staff Report - Supplement B). It is clear that discharges from this site have contributed to significant degradation of the above mentioned creeks. This Order for Administrative Civil Liability considered those discharges and the discharger's non-compliance with General Storm Water Permit No. 92-08 DWQ.
17. Based on staff observations and information received during the inspections, and information received from the California Department of Fish & Game Warden Joe Powell, it was apparent that the discharger failed to implement adequate erosion control measures and failed to adequately monitor and repair the erosion control measures present at the site.
18. The lack of adequate erosion control measures resulted in uncontrolled discharges of earthen materials into Waters of the State. Only limited attempts were made to install and maintain erosion control measures on the upper area of the site during the months of October, November, and December of 1995 and in January, 1996.

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19. The maximum civil liability which could be imposed by the Regional Board in this matter is as follows:
 - a. Pursuant to Section 13385(c.1), \$10,000 per day of discharge;
 - b. Pursuant to Section 13385(c.2), as much as \$10 per gallon for the volume discharged greater than 1,000 gallons.
20. Based on days of discharge and estimated flow, the maximum administrative civil liability which could be imposed by the Regional Board in this matter, under Section 13385 of the Water Code, exceeds \$1,478,000 for eleven days of sediment laden discharge which includes an estimated 136,000 gallons over those eleven days.
21. In determining the amount of administrative civil liability, the Regional Board considered the following factors described in the attached staff report:
"the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." [Water Code Section 13385(e)].
22. The Executive Officer of the Regional Board proposed that the administrative civil liability imposed by this Board be in the amount of \$54,800 which includes \$4,800 in staff costs. The discharger had implemented inadequate erosion control measures late in the 1995/96 rainy season violating the site's Waste Discharge Requirements and Basin Plan Prohibitions. The amount above reflects that although no Clean and Abatement Order had been issued to correct the deficiencies, verbal warnings however, had been given to the discharger indicating that violations of the General Permit could result in this enforcement action.
23. The discharger has requested that up to \$50,000 of the liability be suspended provided that a proposal for a supplemental environmental project, acceptable to the Executive Officer, is submitted by May 19, 1997.
24. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

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IT IS HEREBY ORDERED that Moller Ranch Associates, L.P., pay \$54,800 , to the Cleanup and Abatement Fund for the violations described above. Payment is due on April 2, 1997. Payment should be submitted to the Regional Water Quality Control Board, San Francisco Bay Region, at 2101 Webster Street, Suite 500, Oakland, CA 94612 and made payable to the State Cleanup and Abatement Fund.

This Board agrees to suspend up to \$50,000 of the above amount pending accomplishment of a supplemental environmental project. The discharger must submit to this Board a proposal for such a project, acceptable to the Executive Officer, by May 19, 1997. If the proposed project is not acceptable, the discharger has 30 days from receipt of notice of rejection of that submittal, to either submit a new or revised proposal or submit payment for the full amount suspended. The accepted project must be completed by May 19, 1999. Any money not used by that date must be submitted to this Board and made payable to the State Cleanup and Abatement Fund or directed toward an alternative project acceptable to the Executive Officer.

I, Loretta K. Barsamian, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on March 19, 1997.

3.19.97
Date

Loretta K. Barsamian
Loretta K. Barsamian
Executive Officer